

| | | | | |
|---|---|---|---|---|
| 77:11 78:1 81:11 90:20 93:4 96:24 102:21 105:19 107:10 111:14 112:21 120:14,15 Nobels 77:19 Nobles 77:12 96:25 nobody 72:1,2 83:8 Nobody's 105:22 Noles 8:24 None 60:5 89:16 nonprofit 1:7 7:12,19 30:13 49:14 65:13 97:24 98:5,13 99:8 101:12 102:17 106:3 127:8 nonprogram-related 20:2 40:14,24 Noriega 1:18 5:5 124:20 125:6,24 127:22 normal 41:21 58:21 113:21 normally 42:12,17 North 8:25 Notary 1:19 5:5 124:21 127:22 notations 29:21 75:12 note 24:13,15,17,20 26:9 41:24 42:10,18 44:25 45:6,11 47:19 48:22 56:21 57:11 72:13 73:15 86:6 91:25 99:7,14 104:4 126:5 127:12 notes 3:14 4:2 41:11,12 41:15,16,17 42:15 43:1,5,17,25 44:12 44:14,22 45:5,12,13 45:15 46:3,5,6,11,13 46:19,22,23 47:13,21 47:23,25 49:8,11,25 50:18 52:3,6,9,20,24 52:25 56:15 72:15 73:11,12,14 75:18 78:24,25 85:8,17 86:15 91:7,18 92:1 92:21 112:22,24 113:2 nothing 5:9 notice 1:13 5:2 93:18 noticed 12:25 not-for-profit 66:1 November 6:25 9:4 111:15,17 NSG 126:3 NSG0172 105:20 NSG173 105:21 number 3:9 8:19 16:17 | 28:12 29:25 54:25 81:19 85:3 89:3 95:22 97:16 99:20,24 104:18,21 106:18 108:18 112:23 113:1 114:6 116:18 120:3 120:17 numbering 38:3 Numbers 12:15 111:19 numerous 16:4 NW 2:17 <hr/> O OATH 124:1 object 63:21 93:19 103:24 107:24 objecting 98:21 objection 7:14 8:6 13:20 15:2 20:22 24:11 25:8 29:2 30:5 33:5 35:18 36:19 38:15 40:7 42:11,20 49:22 50:7 55:16 56:9 57:2,13 58:2 60:18 61:11,17,22 62:14 63:17 64:23 65:5 66:3 67:21 68:22 70:22 72:5 73:7,23 79:18 82:13 82:24 83:6,14,24 84:8,21 90:10,15 91:20 92:8 94:1,11 94:17,23 95:8,18 96:12,21 97:13 98:19 98:24 100:17,23 102:8,18 103:14 105:2 108:8,22 109:3 109:8,13 110:3,12 111:10 112:1,15 113:18 114:1,19 115:8,15,24 117:10 117:20 118:13,17,23 119:3,8,24 120:5 121:3,10 122:16 objections 60:13 objective 17:25 obligated 17:2 40:23 105:15 obligation 50:5 100:11 obligations 43:20,21 50:4 53:6,23 54:18 115:4 obtain 97:24 obtained 116:1 obviate 80:19 obviously 51:21 103:25 occasion 7:5,10 9:8 10:21 45:15,25 46:19 47:2,3 49:12 50:1 | 51:2 63:14 64:18 65:1 71:20,22,24 72:3 occasions 9:11,13 117:21 occupied 8:20 occur 20:25 occurred 52:7 83:17 October 1:14 5:3 off 33:18 39:17 43:11 43:12 67:7 80:13,17 91:15 100:1,3 102:24 103:5 122:17,20 office 6:23 21:22 33:4 58:22 60:11 61:6 121:13 127:17 officer 15:8 92:9 121:13 officers 44:13 55:1,6,7 58:19,23 72:8 88:4 116:18,23 120:21 122:2 offices 60:22 official 67:7 124:11 officially 106:6 officials 10:22 Oh 13:4 27:15 105:23 okay 7:9 8:2 10:4,13 12:2,8 13:11,17 14:21 17:14 18:12 19:23 20:10 21:5,13 22:19 25:24 26:5,12 26:23 27:19 30:15 31:3,23 33:23 34:10 34:20,25 36:3 37:22 38:1,12 39:3,15 42:2 43:5,25 44:17,20 45:2,9 46:23 47:11 47:17 49:17 50:17,25 51:4 53:20,20 54:1 56:3,18 57:5,23 59:16 62:4,10 63:8 63:12 64:13,15 65:22 66:23 69:2,3 72:23 75:16,18 76:8 77:19 78:13,15 87:22 90:20 91:6 93:15 95:10,14 117:6 once 66:20 114:25 127:13 one 2:4 20:17,18 21:14 26:14,19 29:18 32:4 32:8,8 33:11 37:4,21 38:19 44:2 46:17 55:21,25 58:4 63:3 67:13 70:14 72:10,21 75:3,9,19,20,20 76:1 76:25 80:6 84:23 89:11 92:11 99:4 | 101:7,14 102:9,9,13 102:24 103:17 105:24 106:4 110:14 119:18 120:6,8 122:21 ones 29:6 76:9,13,19,23 96:2 one's 79:1 one-year 121:15 only 27:22 29:20 30:12 30:24 37:2 56:10 62:11 75:20 79:6,7 96:2 98:4,11 113:8 open 127:17 operate 55:19 63:20 64:5 84:2 operated 122:4 operating 121:21 122:14,25 operation 64:7 98:16 100:11 121:20 opinion 102:6 104:25 110:4,4 111:12 opportunity 96:7 105:17 opposed 37:15 50:5 54:19 60:3 102:9,16 opted 92:7 option 40:3 71:15 options 92:19 order 8:24 49:14 80:19 88:10 95:23 98:5,12 orders 18:18 organization 7:19,21 8:3,7,13,18,18,22 9:5 9:6,10,13,15,23,25 10:1,5,6 11:8 20:8 88:4 117:22 organizations 7:13 8:20 66:1 106:5 original 29:14 85:9 90:13,17 91:15 93:24 118:11,20 119:16 other 10:6 15:17 16:14 16:17 17:10 18:14,19 19:2,19 20:5 25:12 26:6,8 29:19,25 30:3 30:9 31:19 45:6,6,11 45:18 46:18 48:13 50:12 53:8 55:2,25 56:6,10,21,24 57:5,8 57:9,20 59:10 60:15 62:21 63:6,15,24 64:20 65:1 67:13 70:3,14 72:21 74:5 75:19 76:8,9,21,23 76:25 80:6 84:23 89:12 92:18 98:4,15 101:14 104:18 | 117:12,22 119:17 122:21,23 123:3 others 51:5 64:21 92:24 96:25 ought 70:9 out 6:15 10:19 17:3 20:2,13 35:25 36:21 44:9 48:5 49:5 53:13 55:22 60:9 61:2 63:20,24 67:24 69:13 79:14,17 83:7 85:25 104:24 106:18,22 110:7,20 113:13 114:23 119:7,19,20 122:1 outgoing 99:8 outlay 44:15 outside 58:7,22 66:17 82:11 88:3 102:24 117:23 119:12,14 121:24,24 122:12 123:4 outstanding 15:16 32:7 36:9 37:7,10 39:10 93:16 94:7 95:7,10 95:17 110:10,13 111:4 112:14 113:25 114:20 out-of-pocket 26:22 over 45:20 51:25 104:14 109:11,18 122:7 owe 86:1 114:25 owed 95:2 113:10 own 28:13,15,16 44:4,4 49:21 60:22 <hr/> P page 3:2,9 4:1 12:24 29:17,18,20,20,20 30:15,18,19 31:8 33:15 34:5 75:7,8,22 79:7 82:3 85:20,20 90:1 91:5 92:16 93:9 99:21,22,23 100:6 126:5,9 pages 1:20 42:24 75:10 78:18 paid 18:19 32:8 36:10 39:10 105:8 110:10 114:25 paper 73:16 74:17 86:17 papers 46:10 paper's 8:12 paragraph 14:7 15:12 28:18 30:15,17 31:7 31:18 33:14,25 34:8 34:21,23 35:2,9,17 |
|---|---|---|---|---|

| | | | | |
|---|--|---|---|--|
| <p>36:1 37:1,19 39:8 53:5 90:3,6 92:2 93:9 93:16,22 94:4,25 95:1 96:6,11,15,20 97:16,22 98:2 99:5 99:24 100:6,8 104:25 105:7 106:1 116:14 paragraphs 32:5 33:13 36:7 37:11 43:20 55:14 56:7,25 57:24 61:1 65:10,24 67:1 paralegal 32:22 Pardon 6:8 78:7 88:7 107:1 pare 61:4 part 14:14 19:9 21:15 30:19 33:25 39:20 40:20 46:6 48:22,22 49:7 52:21 74:8 75:23 90:20 91:14 93:4 97:22 103:18 104:4 113:21 participated 25:25 58:17 particular 33:1 45:17 45:18,21 51:2 61:1 84:24,25 92:2 95:3 104:12 118:3 121:20 123:5 parties 11:25 69:11 104:6 125:14,15 parts 29:6,7,8 57:20 73:8 party 59:6,8 passed 23:6 Paul 118:5 pay 14:24,25 15:15 17:2,9 18:14,25 19:18 20:2,16 22:1 24:15 36:11 39:12,17 39:18 40:5,6,18 43:21 50:4,20,22 53:6 70:10 71:14 91:13,16 92:3 95:9 100:15 101:4 104:15 109:20,23 111:4 112:17 113:10,13 114:13,20 payable 93:17 94:8 95:10 paying 49:4,5 62:22 95:7,16 101:15 payment 14:23 22:16 24:8,9,24 26:8 29:1 30:20 31:10 42:3,8,9 43:8,8,19,20 45:6,11 45:18 46:2,20,24 47:1,20,21,25 48:25 52:16,18 53:23 54:18</p> | <p>56:6,23 58:20 59:18 60:2 62:6,13,20 64:19 65:2,8,23,25 69:25 73:19 74:6 78:14,19,21 79:14 80:2 83:4,23 92:7 100:10,12 111:8 112:6,13 113:17 114:18 payments 63:15 78:25 109:1,11 115:17 pays 8:18 Peabody 2:9 Pearlman 105:20,25 107:4 111:16,17 112:5,8 penalties 126:22 people 10:25 18:2 24:5 25:4 30:9 63:24 88:1 101:24 percent 13:14 14:2 33:10,10 51:23 53:12 67:22 79:5,14 86:14 115:17,19 percentage 44:5 perfectly 30:9 performed 117:13 performing 51:15 perhaps 26:2 80:4 period 52:21 66:25 67:6,8,13,16 70:1,8,9 70:11 90:8 110:1 111:8 perjury 126:22 permission 71:7 permit 106:3 permits 58:14 permitted 70:13 person 16:4 25:19 59:22 68:10 118:5 personally 124:7 personnel 64:4 persons 48:25 58:17 62:25 69:16 Persuans 87:4 pertains 13:25 Peter 81:17 philanthropy 120:24 phone 53:13 58:21 73:25 112:25 phrase 16:23 23:19,21 23:22 32:5 34:14 37:7,14 38:3,13,23 119:21 122:14 phrases 16:25 piece 73:16 86:16 pieces 120:11,13 pitch 105:17 place 1:15 2:4 42:23</p> | <p>86:21 placed 12:17 Plaintiff 1:5,13 2:6 5:2 planned 112:12 please 6:7 28:18 33:23 64:6 85:11 95:15 102:22 103:3 112:2 126:4,8 127:12,17 plus 48:13 114:21 point 1:16 5:4 11:11 16:15 18:22 19:23 20:12,25 21:5 25:13 26:5 27:9 32:4,10,12 32:17 35:7 52:15 53:14,21 59:14,15 66:7 83:7 92:4 100:20 101:7,17,20 101:20 104:13 106:19 118:2,8 127:7 portion 31:6 46:24 portions 75:6 position 5:23 7:1 10:2 17:2,9 19:18 20:1 40:22 111:7,23 113:24 positions 8:19 positive 51:24 53:12 positively 74:15 possibility 47:6 57:18 106:20 possible 19:2 21:2 65:2 65:3,3 possibly 51:25 53:22 post 6:2 postage 44:4,6,8,9 46:15 47:8,16 48:3 48:11,21,23 49:5,6 56:13,14 57:20 66:19 97:23 98:4,12,15 100:10,12,15 101:12 104:15 105:5,8 110:15,19 114:23 postal 22:14 23:4,15 24:10 65:13,19 99:7 101:4 105:1 potential 19:7 21:6 22:5,11,15 23:12 24:6,7 41:24 50:3 practice 41:10,21 42:21 73:11 113:21 preapproved 94:10 preceded 106:9 precipitated 105:24 precise 14:2 55:17,18 precisely 13:1 predated 10:2 preliminary 12:5 preparation 76:12 prepare 10:23 12:8</p> | <p>60:21 prepared 11:14 13:5 14:14,22 16:20 22:25 35:14 60:15,17 61:4 77:16 86:1 87:8 97:17 preparing 61:7 89:15 presence 82:14 present 16:3,20 122:12 presentation 83:25 presented 11:20 15:7,8 51:19,20 85:15 116:22 presenting 16:5 president 87:2 120:16 presume 13:15 29:23 32:11 33:8 38:25 48:15 78:10 pretty 106:20 previous 7:24 previously 54:5 57:9 66:20 76:4 89:12 100:5 105:15 114:24 primarily 11:4 25:5 66:8 69:15 primary 69:17 prior 6:13 7:3,9,15 9:20 10:4,8,9 11:19 67:23 69:22 70:2,4 82:22 83:2 84:14 85:14,16 89:21 91:18 94:16 121:16 pro 48:16 119:15,17 probably 104:2 problem 21:6,6 22:5,11 23:8,12 26:20 33:22 49:19 66:21,22 78:24 79:3,11 procedure 28:10 60:10 86:21 127:14 procedures 122:25 proceed 24:23 45:3 99:16 proceeded 23:10 24:21 proceeding 7:5 proceedings 112:13 proceeds 16:7 17:19 21:11 108:14 process 30:19 61:23 87:17,23 processor 60:24 61:2 produce 36:10 39:11 40:5 72:23 73:15 produced 39:17 46:10 73:6,22 74:22 80:12 80:21 professional 7:7,13,25 9:15,20,25 10:7,16 66:1 125:6</p> | <p>profit 115:6 program 16:7,8 17:9 17:12,25 18:14,15,21 18:25 19:16,18 20:2 20:16,17,20 21:12 22:1,7,8 32:6 36:8 39:9 40:5,19 42:4 43:21 44:17 48:21,25 51:13,15,19 56:23 57:20 62:6 63:5,20 65:13 82:12 84:1 86:3 97:24 98:5,16 107:17 108:4,7,12,12 108:14,20 114:21 121:20 122:8 123:4 programs 17:3,4,23 18:6,15 19:4,8,10,20 20:4 22:1 105:13,17 progressed 19:25 promissory 24:13,15 24:16,20 26:9 44:25 45:6,11 56:21 57:10 78:25 99:7,14 promissory-note 24:24 proof 116:5 proposal 16:5 26:6,12 26:13,13 44:25 45:2 45:7,12 46:15 48:1,2 56:22 62:21 63:5,6 67:19 69:24 70:6,17 70:19,21,24,25 71:2 71:4,19 72:1,2,7,14 72:19,20 73:4,5,19 proposals 57:5 62:5,11 62:15,20 63:14,15 64:19,20 69:4,5,7 76:16,21 116:24,25 122:25 123:3,3 proposed 11:14,20,24 14:16 17:24 24:13 31:7,17 34:8 48:11 57:10,18,23 59:13 62:7 67:16 68:8,13 72:3 79:9 87:12 105:14 proposing 68:11 proprietary 30:21 protecting 101:21 protection 104:23 provide 14:23 26:24 27:12 87:11 91:2 127:14 provided 15:1 24:12 27:19 77:1 89:9 117:9 118:11,20 providing 88:4 provision 14:10 20:19 28:23,25 30:20 31:19 35:16 39:8,16,19</p> |
|---|--|---|---|--|

| | | | | |
|--|---|---|---|--|
| <p>40:15 67:4,5 86:9 103:22 119:2 provisions 14:23 21:10 24:8,9 36:18 42:3 43:8,20 47:25 53:5 56:24 60:2 65:8,11 65:17,23 69:25 77:4 79:12,14 80:3 83:4 84:5 90:6,13,16 94:15,21 96:10 116:13 117:18 Public 1:19 5:5 124:21 127:22 purchasing 44:8 pure 40:20 purport 52:21 purported 46:11 purporting 61:15 purports 12:14 41:14 purpose 28:10 64:9 purposes 18:9 pursuant 1:13 5:2 put 19:11 23:13 44:9 79:22 80:11,16 86:21 103:18,20,24 108:24 putting 56:3,12 57:19 P.C 2:3 p.m 1:17 103:2,2 123:10 127:17</p> | <p>rates 44:7 49:14 65:14 66:19 97:24 98:13 99:8 102:7 rather 38:4 ratified 109:24 Re 127:8 reached 35:15 55:4,6 84:10 109:21 reacted 61:21 read 3:6 28:19,22 35:24,25 36:1 44:24 48:1 86:3 91:11 112:2 126:4,22 127:12,15,16 reading 98:6 121:1 reads 120:20 ready 127:11 realization 40:17 realized 19:2 really 20:4 66:17 101:18 106:10 117:11,15 realm 69:13 reason 51:14 63:5,7 66:24 98:14 101:18 102:1 126:5,9 127:13 reasonable 67:10 reasons 31:19 recall 11:6 12:10 13:1 26:4,18 29:6 30:24 30:25 31:13,16 32:13 36:23 45:20,21 50:8 51:8,9,11,23 52:19 53:18 54:21 55:20,23 55:25 56:12,15,22 57:3,5 58:23 59:15 60:6 65:15,21 66:4 67:3,5,6,11,15 68:18 70:2,14,18 71:19 72:7,9 74:9,12 77:3 80:5 81:5 84:15,22 84:22,23 101:22 102:3 111:21 112:16 112:18,19 113:24 120:12 recalled 84:13 receipt 127:14 receipts 20:16,21 21:25 82:12 receive 29:14 60:11 61:14 78:5,8 received 6:9 11:21 16:7 21:8,13 33:4,11 66:14 72:18 78:10 89:22 90:14 101:11 115:18 116:4 receiving 26:18 32:25 32:25 111:21 recently 112:9</p> | <p>recited 104:12 recognize 12:19,23 13:3 27:4 29:12 32:21 75:9,14 76:5,6 76:20 77:15 78:3 85:12,17 87:6 97:2 103:6 105:21 112:23 114:6 recollection 13:18 28:21 30:12,16 45:14 46:1,25 49:17 50:1 51:1 52:7 53:4 54:6 55:9,13 56:5,10 58:5 58:13 59:16,21,23 60:19 62:24 68:15 70:20,23,24 71:1 76:10 77:22 78:20 90:18 91:21,24 92:17 92:23 113:15 recommended 113:9 record 5:14 43:11,12 80:12,13,16,17 81:14 100:1,3 102:24 104:4 122:17,20 125:10 records 27:20 28:13,15 28:17 74:23 75:2 recover 68:2 recovery 94:15 redrafted 44:3 reduced 44:6,7 117:1 red-line 34:22,24 35:1 35:4,16,20 red-lined 33:24 refer 43:7,18,18 45:5 46:24 47:24 52:21 109:16 119:22 reference 46:3,18 48:24 49:8 52:4 99:5 referred 8:15 23:3 48:23 49:8 82:1 97:12 referring 14:11 106:12 107:8 119:13,14 refers 13:19 44:20 72:13 reflect 15:17 33:14 44:25 50:18 76:16 83:11 92:17 97:25 98:17 reflected 26:16 34:16 34:22 35:14,16 57:24 65:9,24 73:5 74:7 84:6 96:1 reflection 107:21 reflects 110:9 refresh 28:21 30:16 46:25 49:17 50:1 77:22 91:21 113:15 refreshed 91:24</p> | <p>regarding 32:23 44:2 79:14 81:6 83:4,12 83:23 84:19 89:18 92:2,19 93:2 99:14 102:3 112:6 Registered 125:6 registration 30:10 regular 81:1 102:7,9,13 102:16 regulations 22:14 23:4 23:16 24:10 rejected 56:4 57:14,16 57:21 113:6 related 8:4 116:19 relationship 8:10,16 99:3 114:12 116:20 relative 125:13,15 rely 46:15 48:3 relying 47:14 48:23 remainder 49:11 110:21 remember 15:5 16:18 22:19,21 23:21 24:16 25:18 29:16 32:10,24 32:25 36:21 38:25 41:9 55:3,4 59:1 76:1 77:13 84:25 89:20 101:22 113:9 render 9:9 37:6 renewal 37:5 rent 8:18 71:7,16 rental 19:3 70:12 90:7 93:23 renumberings 32:5 repeat 43:13 95:14 103:3 118:18 report 125:8 REPORTED 1:18 reporter 3:4 74:16 81:13 125:1,7 126:7 REPORTING 127:1 reports 108:3 represent 40:21 representation 23:1 82:18 83:4,9 84:6 representations 82:23 83:12,22 84:19 representative 82:20 122:5 representatives 58:8,8 111:11 represented 50:11 65:24 68:17,19 82:10 82:15 86:16 107:25 request 72:24 requested 27:11,21 125:9 require 79:3 required 97:23</p> | <p>requirements 7:11 65:19 residence 5:17 resolution 52:15 53:14 121:16 122:8,21 123:5 resolve 52:1 resolved 59:2,12,18 60:2 77:5,6,8,24 78:22 79:5,20 resolving 26:20 resort 18:13 resources 18:14 19:19 respect 10:15 11:1 12:3 12:4,9 13:6 15:12,19 17:14 21:7 22:6,16 25:2,5 26:7 30:3,10 31:18,19 33:24 34:8 34:21 35:9,15 39:7 40:2,15 42:3,17 43:21 46:20,23,25 47:19,21 49:25 53:6 56:6,22 57:6 62:5,13 62:20 63:14 64:19 65:8 66:25 69:24 70:6 77:4,23 78:21 respond 60:12 61:9 responded 62:11 73:20 73:21 responding 49:1 response 18:8 49:2 72:19,23 80:21 responses 73:5 responsibility 100:9 responsible 36:11 39:12,18 40:6 48:9 49:15 rest 112:17 result 17:4,19 19:19 22:4 86:20 100:10,16 115:7 resulted 19:8,25 54:15 92:23 results 107:21 resumed 103:2 retained 4:6 return 126:6 revenue 19:1 36:10,14 36:22 37:15,21,24 38:4,7,10,13,16 39:1 71:18 revenues 20:3,3 review 12:5 13:2 15:9 64:6 72:22 78:15 85:16 86:25 87:1 88:5 96:7,16 97:19 105:13,15 125:9 reviewed 14:13 75:5,11 reviewing 13:25 38:11</p> |
|--|---|---|---|--|

Q

qualify 44:6,8
quality 117:8,11
question 9:22 16:4
18:23 28:10 32:15
33:21,23 43:14,16
48:6 50:15 58:4
64:13 69:18 71:10,11
95:14 103:3 108:9
questions 16:13 24:25
60:12 61:23 64:6
127:17
quick 15:11
quite 13:16 45:23
69:12 100:25

R

raiding 19:1
raise 18:1 40:18
raised 18:23 48:17
raising 18:1
Ralph 11:2 12:13 52:13
52:13 85:4 88:19
89:5
ranking 121:13
rare 9:11,11,13
rate 44:6 48:10 101:12
101:12,16,19 102:16
102:17 110:15,16

| | | | | |
|--|---|---|---|--|
| <p>revised 32:19 right 24:4 30:23 34:13 34:17 38:21 39:23 42:10 45:3 46:8 53:24 57:17 61:21 67:7 75:25 80:18 82:6 86:8 93:15 105:23 106:17 108:21 116:12 123:7 127:15,16 rights 98:6 right-hand 112:22 risk 16:6,12,24 17:18 21:25 23:3 44:7 48:20 84:2 86:3 Rocky 1:16 5:4 127:7 rolled 48:8 Rowes 2:10 RPR 1:18 5:5 124:20 125:24 127:22 rule 23:20 24:2 65:19 66:18 67:25 78:25 Rules 127:14 rumor 69:20 run 123:1 running 87:18</p> <hr/> <p style="text-align: center;">S</p> <p>same 8:21 36:12 37:11 37:13 38:3,18,22 74:13 89:11 94:25 117:13 119:22 126:5 satisfactory 10:23 26:10 49:20 satisfied 40:16 satisfy 19:16 20:18 35:23 satisfying 92:20 saw 105:23 106:8 saying 20:19 71:15 86:9 112:16 says 29:22 30:21 34:10 34:18 36:8 37:3,4,9 39:9 44:2,14 46:14 78:11 79:8 85:24 86:6,10 87:11 92:21 97:16 106:1 113:6,8,11 school 6:2,4,18,18 scientific 116:5 scriveners 58:10 seal 103:18,20,24 104:5 124:11 second 11:5 29:18 31:25 75:22 100:1 102:25 103:17 secondly 18:1 second-to-last 87:10 secretary 21:21 113:1</p> | <p>section 15:13 29:5 31:22 36:25 37:17 secured 113:10 see 6:15 17:23 29:10,21 35:4,25 38:11,17 39:13 46:12 48:1 59:2,12 75:4 88:2 89:6 97:19 107:18 seem 51:23 101:22 seen 105:22 107:11 120:17 121:22 self-sustaining 18:16 Semb 11:2,20 12:13 14:15 16:5,9 20:14 44:13 58:24 63:1 69:8,15 85:4,14 88:19,19 89:5,9 send 49:1,5 71:17 119:6 sent 23:15,16 26:16 28:4 32:23 61:2 63:19,24 67:3 97:5 105:25 106:16 122:9 sentence 34:11 37:2 87:10 97:16 98:2 120:20 separate 24:13 99:6 separately 59:18 September 6:21 107:22 series 41:14 74:21 101:23 Service 1:7 22:14 30:13 127:9 services 1:4 7:25 9:9 24:10 26:25 32:24 91:3 111:16 117:8,12 117:13 120:16,24 127:8 service's 65:19 serving 10:16 session 16:15 121:18 122:6 set 110:24 Seth 105:20,25 112:5,8 sets 111:23 settle 111:24 settlement 109:7,16,21 seven 109:25 110:9 116:25 several 86:24 severally 106:4 share 8:17 113:6 SHC 12:9,15 14:15,17 15:15,16 18:3 19:23 21:25 22:6,16 25:3 26:1 27:19 28:12 40:21 41:20 44:6,8,9 48:8 49:14 57:11,25 59:17,24 60:1 62:20</p> | <p>63:13 77:20 86:1 91:12 97:22 98:3,11 99:6 113:10 SHC's 18:12 21:7 61:20 SHC/Vantage 24:1 30:3 SHC00312 93:9 SHC00370 85:5 SHC00374 85:5 SHC01893 114:6 SHC03322 91:4 SHC03336 91:5 SHC04061 112:23 SHC04236 81:19 SHC04241 82:3 SHC04276 81:19 SHC047233 87:5 SHC047239 87:6 SHC04725 89:5 SHC04737 89:25 SHC04771 97:1 SHC04772 97:1 SHC200 32:20 SHC4962 27:2 sheet 3:5 126:1,6,6,8 127:12,13 Shelly 1:18 5:5 124:20 125:6,24 127:22 short 26:20 shortfall 22:7 50:4,20 50:22 53:7,24 56:6 56:23 63:14 70:8,10 71:5,13,13,14 110:2 shortfalls 49:15 62:6 62:22 64:19 shortly 15:24 84:9 121:16 shotgunned 106:18 show 52:13 108:11 showed 32:9 shown 90:16 shows 33:6 Shrine 8:25 Shriner 34:18 Shriners 1:15 2:19 5:3 5:20,24 6:13,22 7:3,6 7:18,23 8:3,4,8,11,15 9:3,19 10:9,14,17,22 10:25 14:24 16:6,11 16:21 17:1,8,18 19:1 19:18 20:1,15,19 21:2,10 23:9,12 24:14 25:17 26:21 27:10 28:13,15,16 31:12 36:11 37:6 39:12,18 40:3,6,9,12 40:14 41:2 42:5,8 43:21 44:5,13,15</p> | <p>45:2 47:6 48:12,18 48:19,20 49:4,19 50:3,9,20 51:12,14 53:6,15,16,23 54:9 55:7 56:4,12 57:6,19 58:8 62:21 63:4,6,22 63:22,25 64:3,10,18 67:13 69:15 70:9 71:14 72:9 74:23 75:2 80:21,25 81:1,6 82:11,23 83:5,12,13 83:21 84:2,10,19 86:24 90:7 92:2,7,19 94:9,21 95:7,9,16 96:9,18 99:16 100:9 100:15 101:4 102:14 104:14,20,22 105:7,8 105:11,18 106:6,13 106:21 107:14 108:14 109:19,22 110:18 111:3,8,18 113:25 115:2 116:20 116:21 117:14 118:16,22 119:7 120:4,22 121:1 122:15,24 127:6 Shriners/Vantage 27:6 73:1 74:22 76:12 84:15 side 26:7 sign 3:6 99:6 126:6 127:13,15,16 signature 29:25 127:11 signed 29:22 67:23,24 68:5 74:9,11 77:10 significant 73:13 signing 56:20 84:15 116:8 simply 15:13 20:19 22:6 23:12 38:12 57:19 since 6:25 9:3 23:6 Sincerely 127:20 single 15:8 73:15,16 sir 5:16 7:8 12:19 27:14 28:18 29:12 32:21 46:7 54:1 70:4 74:5 77:14 78:3 80:8 117:6 sit 53:3 70:16 121:24 situation 7:15 54:12,14 situations 52:1 69:11 six 5:25 6:14 12:10 15:6 22:22 41:9 45:21 59:4 60:6 72:16 80:6 skip 47:12 small 114:21 Smith 120:16 121:11</p> | <p>121:11 122:10 solely 53:18 solicitation 15:15 18:9 18:24 49:1 solicitations 18:20 solicited 18:3 soliciting 121:21 some 11:14,23 18:22 19:7,15 20:12 21:5 21:17 22:2,11,14 23:12,15 24:5 26:5,6 27:9 29:3,8,17 30:9 30:18 31:1 35:6 36:4 40:21 41:23 51:14 53:20 56:20,21 57:20 59:11 60:3 68:12 69:6,20 73:13,19 76:10 98:22 100:20 102:2 104:19 109:18 109:19 110:17 112:22 115:4 116:25 117:1 122:3,3 somebody 11:14 13:11 35:25 68:8,14,19 69:20 101:13 somehow 54:12 someone 68:1,16,17 75:13 76:3 something 18:3 26:8 32:25 42:17 45:20 46:12 47:14 48:13 54:3 56:14 66:8 75:5 75:11 91:12 sometime 104:9 Sometimes 8:15 Somewhere 120:6 soon 121:25 sorry 33:18 55:23 95:13 115:25 117:5 sought 101:5 source 19:1 22:11 69:6 69:20 space 8:17 speak 20:7 81:10 speaking 79:12 119:25 speaks 13:15 31:21 32:11 specific 41:1 58:13 59:3,22 60:5 62:5,24 68:10 73:19 76:10 79:25 81:8 119:20 specifically 26:3 30:24 41:7 54:21,22 55:23 56:15 58:23 59:17 67:14,17 70:15,25 84:22,23 102:4 112:19 speculation 40:20 spoke 44:13 52:10</p> |
|--|---|---|---|--|

| | | | | |
|--|--|---|---|--|
| 58:25 81:5 101:18 spokesman 69:17 squiggly 30:25 staff 6:22 stages 101:10 stamp 105:20 standard 102:17 staple 75:24 start 20:13 48:7 122:1 started 54:14 starts 91:4 state 1:19 5:5 15:13 113:24 124:3,21 125:3 127:22 stated 113:20 statement 50:9 82:16 97:19 98:8 99:10 112:3 116:3 statements 32:7 36:9 39:10 93:17 94:8 states 1:1 93:16 97:22 98:3 100:22 104:10 122:22 status 11:10,12 stay 44:10 46:17 staying 46:21 stenographically 125:8 step 102:24 stick 50:15 still 49:14,19 70:8 71:5 71:12,17 109:22 stipulation 80:11,15 stop 123:8 stopper 52:13 Street 2:17 5:17 strike 10:19 20:13 60:8 114:9 subject 17:24 53:22 78:13 118:21 126:23 submitted 15:16 18:18 76:17,22 110:14 subpoena 28:4 80:22 subpoenaed 27:23 28:2 28:6 73:17 subsequent 14:18 16:16 21:9,20 23:5 26:19 39:16 52:8,9 52:22,23 53:11 54:6 67:24 111:1 116:8 119:16 subsequently 15:20 23:2 51:21 106:23 112:11 116:19 substance 14:24 22:19 28:24 36:17 39:15,19 41:17 55:14 56:7,24 97:8 114:17 126:23 substantial 42:5 sue 104:14 112:17 | sufficient 65:12,18 suggested 28:25 29:7,7 29:8 34:20 54:22,24 55:8,14,18,20,21 56:5,23 58:5,20 68:16 suggestion 13:23 54:7 54:8 56:11 68:1 104:3 suit 102:3 106:8,22 113:12 116:1 Suite 2:16 sum 56:13,20 summary 6:2,13 107:17 superiors 12:9 supplied 13:12 27:24 supposed 14:25 101:15 122:25 supposedly 106:16 sure 8:11 13:14 14:2 28:20 32:1 33:10,10 38:23 43:3,3 45:24 74:18 79:6 92:25 100:2 118:7 122:19 surmised 101:20,21 surprise 50:8 58:19 surrounding 116:16 suspend 123:9 suspended 103:1 sustained 104:24 switching 117:7 sworn 5:8 124:8 | 127:7 telephone 41:11,12,15 41:22 tell 5:8 12:19,22 14:9 22:13 28:14 29:24 42:25 43:6,17 44:21 46:13 49:10,10 59:4 59:12 62:24 75:19,20 77:1 81:16 85:12 92:25 95:22,25 103:12 107:13 114:9 114:17 121:9 telling 49:13 58:25 59:24,25 ten 25:25 term 38:4,14 48:11 101:9 109:18 111:1 121:15 terminate 91:12,13,16 92:3 terminated 95:3 terminates 92:22 terminating 109:17 termination 15:13 31:11,19,20 35:10 37:8,10 39:7 40:2,8 40:16 41:3 43:9,9,22 43:23 50:5,6,21,23 51:12,14,22 53:7 54:15,18,19,20,22,23 59:19,20 60:3,4 63:21 70:7 90:3 92:15 93:2,10 109:20 terminology 74:5 terms 15:17 24:16 42:8 Terrie 52:11 88:22 test 44:17 48:11 testified 5:10 53:8 63:10 66:20,20 71:25 72:6 83:7 84:13 testify 58:14,16,18,18 70:16 74:15 86:14 testifying 27:17 testimony 58:3 70:3 84:16 89:12 91:18 103:19 104:5 119:1 125:10 text 36:4,5 Thank 9:1 10:13 28:7 80:8 126:7 127:18 Thanks 98:24 their 49:2 88:5,6,8 97:18 101:3 111:12 113:5 themselves 17:5 88:25 Theodore 87:4 therefor 127:13 thereto 111:17 thing 30:25 33:8 42:9 | 110:5 things 18:7 21:20 60:17 73:13 74:4 104:21 105:24 113:12 115:2 115:3 119:12,20 think 9:18 11:19 14:19 25:15 28:4 31:14 32:16 36:24 46:9 53:10,11,12 66:21 75:4,23,23,24 76:1 96:4 102:1 103:5,15 103:25 109:18 thinking 79:19 119:23 thinks 48:18 third 31:8 69:6 83:9 98:2 118:5 third-hand 69:20 third-party 104:19 106:7,19 third-to-last 89:25 though 44:18 50:15 63:8 thought 41:18 42:18 47:9,13 52:25 67:10 thousands 120:13 threatened 113:16 three 29:19 87:20 120:6,8 through 6:16,17 12:15 25:14 27:2,23 32:20 36:20,24 43:5,17 84:9 85:5 87:6 107:22 123:1 127:17 tie 115:2,3 time 1:17 6:24 7:11 9:23,23 10:19,20 11:3,6,9,13,23 13:2 14:13,21 19:22 23:5 23:16 24:19 25:14 32:13 35:13 36:11,23 39:12,25 42:12,15 47:4,4 48:4 49:3 51:18,20 52:10,14,22 53:13 54:25 55:11 58:19 60:25 62:10,12 62:12 63:2 66:13,25 67:10,19 68:12 69:16 69:22 70:1,8,9 71:9 71:10,11 72:10 73:11 73:14 82:2,21 88:17 88:18 89:21 98:16 100:20 104:21 112:9 116:8 117:14 121:11 121:23 times 16:4 42:14 51:9 69:10 73:9,13 117:21 titled 94:4 today 27:17 53:3 70:16 96:7,16 97:18 113:12 | together 53:19 108:24 told 9:18 14:15 22:20 22:24 23:11 24:20 47:5 62:4 66:20 69:2 69:7,21 92:1 101:14 102:1 111:11 116:18 116:18 top 31:8 75:22 topic 51:2,7 80:20 84:25 85:1 117:25 total 16:7 108:2,20 109:11 120:8 totally 53:17 towards 39:8 73:25 transaction 15:19 42:13 transcript 125:9,10 126:4,6,6,8 127:11 transcription 126:5 transmission 35:7 transmitted 33:3 transmitting 87:12 treasurer 11:7 trial 101:10 true 18:5 19:5 25:7,9 80:23 99:2 125:10 126:23 trustees 87:14,24 88:12 88:20 97:7 truth 5:8,9,9 truthfully 32:10 try 9:16 41:17,24 42:18 73:11 98:21 115:11 trying 9:17 53:13 113:20 123:2 two 8:20 18:6 36:17 37:11 38:20 88:2 119:18 type 68:16 |
| | <hr/> T <hr/> T 8:23 take 7:18,23 8:2 12:18 12:21 14:21 15:11 19:17 21:14,17 23:22 24:23 25:2 26:10 27:19 28:11 31:14 33:2 38:17 41:22 42:2,15 49:12 50:25 56:1 58:12 60:7 63:8 63:25 66:13 67:11,15 67:18 68:20 69:3 70:20 72:23 73:3,11 73:12,14,20 78:15 85:11 96:6 99:24 taken 1:13 5:1 52:16 86:2 126:2 127:11 taking 41:11 86:15 talk 122:18 talked 61:5 talking 7:15 17:22 21:22,23 26:19 32:6 34:7 76:4 95:4 113:8 Tampa 1:16 5:4,18 25:22 26:1 84:14 | <hr/> T <hr/> T 8:23 take 7:18,23 8:2 12:18 12:21 14:21 15:11 19:17 21:14,17 23:22 24:23 25:2 26:10 27:19 28:11 31:14 33:2 38:17 41:22 42:2,15 49:12 50:25 56:1 58:12 60:7 63:8 63:25 66:13 67:11,15 67:18 68:20 69:3 70:20 72:23 73:3,11 73:12,14,20 78:15 85:11 96:6 99:24 taken 1:13 5:1 52:16 86:2 126:2 127:11 taking 41:11 86:15 talk 122:18 talked 61:5 talking 7:15 17:22 21:22,23 26:19 32:6 34:7 76:4 95:4 113:8 Tampa 1:16 5:4,18 25:22 26:1 84:14 | <hr/> T <hr/> T 8:23 take 7:18,23 8:2 12:18 12:21 14:21 15:11 19:17 21:14,17 23:22 24:23 25:2 26:10 27:19 28:11 31:14 33:2 38:17 41:22 42:2,15 49:12 50:25 56:1 58:12 60:7 63:8 63:25 66:13 67:11,15 67:18 68:20 69:3 70:20 72:23 73:3,11 73:12,14,20 78:15 85:11 96:6 99:24 taken 1:13 5:1 52:16 86:2 126:2 127:11 taking 41:11 86:15 talk 122:18 talked 61:5 talking 7:15 17:22 21:22,23 26:19 32:6 34:7 76:4 95:4 113:8 Tampa 1:16 5:4,18 25:22 26:1 84:14 | <hr/> U <hr/> ultimate 20:11 29:4 ultimately 6:19 19:25 27:7 40:15 48:9 49:15 56:8 57:25 65:9 88:10 under 14:25 42:4 51:15 83:13 84:19 85:25 92:20 93:1 95:6,11 95:16 100:14,16 102:7 103:18,20,24 104:5 105:7,9 108:12 109:23 110:24 112:6 113:17 117:9 122:25 126:22 undergraduate 6:3 underlies 10:10 underlying 101:5 underneath 85:22 |

| | | | | |
|--|---|--|--|--|
| undersigned 124:6 understand 9:2 15:22 19:13 27:25 30:8 37:13 45:23 49:7 71:24 understanding 11:10 15:18,22 16:1,19,24 48:24 49:3 82:10,15 understood 64:11 106:12 United 1:1 100:21 104:10 University 6:3,4,11 unless 113:13 unreasonably 34:11,15 34:19 until 6:21 14:18 32:7 36:9,10 39:10,11 48:5 upfront 57:19 upper 112:22 use 16:23 17:11,16,21 17:22 37:14 40:3,17 91:13,17 92:4 98:12 used 20:4 119:21 uses 37:21 U.S 22:13 81:18 | 115:1,1,4,6 116:2,9 116:13,18,23 117:3,8 117:12,18,23 118:3 119:1,6,6,18 120:3 120:16,17,17,24 126:3 127:8 Vantage's 17:9 42:4 98:3 101:24 110:21 111:7,23 113:24 115:17 Vantage/Miller 27:10 Vantage/SHC 62:8 77:4 variation 119:17 various 26:20 32:4 60:8 116:24 117:25 122:2 VerMaas 77:12,19 88:20 version 34:22 35:3,16 36:13,15 37:8,9 38:20 94:20 95:1,3,4 95:6,11 versions 74:13 94:16 very 16:9,15,19 53:2 56:19 74:1 79:11 117:24 via 99:8 127:11 view 19:23 23:11 66:8 118:8 virtue 121:12 visibility 117:25 volunteers 122:24 vs 1:6 126:3 127:8 V-A-S-S-I-E 88:23 V-E-R-M-A-A-S 88:20 | 76:25 79:22 80:6 84:23 92:18 122:4 ways 56:22 62:5 65:2,3 65:3 week 14:19 25:25 well 8:2,10 10:19 12:23 16:18 20:12 30:9 35:3 36:2 37:2 53:2,3 54:17 55:12 56:19 58:23 60:7 68:19 74:3 79:1,12 86:14 87:19 91:1 92:1,21 108:13 went 6:3,17,18 9:3 15:4 23:14 68:3 were 10:25 11:9,13 12:2 14:10,23 15:1 16:13,14 17:24 18:6 18:7,8,18,18,19,20 20:4 25:4,4 27:24 28:2,3,6 29:3 31:4 32:3,4 41:23 42:14 46:10 49:1,6 51:9,17 52:25 53:13,18 54:11 55:1,9 58:6,10,14 60:15 61:1,4 62:6,11 63:15,19 64:20 65:12 65:12,18,20 66:8,13 69:2,3,4,5,11,12,13 73:9,10,12 74:5 76:4 76:7,13,14,17,22 77:6,19 79:14,17 83:22,25 86:13 88:3 88:17 89:9,12 90:13 93:24 94:15,21 95:1 95:7 101:4,5,15 102:12,15 103:5,9 104:17,20 105:13,14 108:20 109:11,19 110:10,13,19 111:4,8 112:5 113:25 114:9 114:12,14,20,22 116:17,22 117:17,21 118:21 119:7,11,13 119:15,18,23 120:12 121:6 123:1 weren't 10:4 22:1 59:6 66:11 120:3,8 West 5:17 we'll 20:12 80:16 123:8 we're 21:22 26:19 81:12 95:4 112:17 we've 38:16 80:15,18 123:8 Wharf 2:10 whatsoever 10:3 35:1 89:16 100:12 while 21:22 86:13 whole 5:8 42:15 110:5 | Willard 107:11,14 William 23:6 97:11 98:11 willingness 41:2 wills 87:15,25 88:13,21 97:7 withheld 34:12,15,19 witness 124:11 125:11 Wood 87:4 word 33:6,9 35:24,24 60:24 61:2 wording 29:5 36:12 38:23 74:14 94:24,25 words 37:7,9 60:15 work 6:18 9:3,8,12 53:13 worked 16:17 48:5 79:14,17 113:13 working 29:25 63:1,1,2 92:10 worried 66:8,10,11 wouldn't 24:9 42:19 114:25 write 113:20 writing 75:4 114:11 written 96:11,20 wrong 106:17 wrote 15:12 | 0213 93:13 04-11686-WGY 1:6 126:3 1 1 1:20 3:10 12:18 14:8 14:10,14 21:15 37:8 37:19 75:10 85:7 97:16 105:19 1.148 48:6 1.17 38:2,18,19 10 3:19 75:8 85:3 10/28/05 126:2 100 13:14 14:2 33:10 33:10 51:23 53:12 67:22 79:5,14 86:14 102 3:22 105 3:23 107 3:24 11 3:20 87:3 89:3 11/01/2005 124:12 125:19 127:5 11:40 74:19 11:50 74:19 111 3:25 112 4:2 114 4:3 12 3:10,21 93:6,14,15 12A 74:23 75:4 12B 74:23 75:4 12C 74:24 75:6,7 12D 74:24 75:10 12.1 14:7,9 15:12,13 90:3 12/2/03 112:22 12:45 103:2 120 4:4 125 3:4 126 3:5 127 1:20 3:6 13 3:22 12:12 85:4 89:4 89:21,23 94:25 95:1 95:10 13A 74:24 75:11,11 13B 74:24 75:17 90:21 13C 74:24 75:18,25 76:2 13F 74:24 76:4 93:5 13.1 31:7,22 33:13,14 33:17,25 34:8,10 74:14 93:9,16,22 95:9 96:15,20 110:24 13.1(a) 31:10 13.1(b) 31:9 32:11,11 32:13 34:1,2,16,21 34:23 35:10,17,19,20 36:1 39:3,21,22 43:20 53:5 55:14,19 56:7,25 57:24 65:10 |
| V value 19:7,8,11,12,15 19:16 Vantage 1:4 7:4,24 9:20 10:2,5,15,16,24 14:17 15:14,15 16:13 17:20 18:19 22:16 24:15 25:4,12 26:2 32:6 36:8 37:3,4 39:9 44:16 46:15 47:14 48:1,2,18,23 50:12 51:7,14 54:9,12 55:8 55:21 58:9 59:1 62:17 64:2,21 68:1 68:13,14,17,17,20 69:16,17,24 70:6 72:2 81:7 82:1,10,19 82:20 83:3,11,21,23 85:15 86:1,2 93:18 94:9,9 96:10,19 97:9 97:18 98:14 99:5 100:11,20 101:3,11 101:14,17,21,24 102:3,6,15 104:11,13 104:19,23,23 105:14 105:16 106:4,8 107:17 109:1,6,11,16 109:17,21 110:10,14 110:23 111:11,15,19 111:19 112:10,12 113:16 114:12,18 | W W 121:11 waiver 127:15 walk 51:13 84:11 walking 54:10 63:5,6 want 17:8 18:13 20:1 28:19 35:25 40:12,22 54:11 71:14 85:6 100:24 102:21 103:18,24 wanted 18:15 31:2 51:13 52:11 59:11,17 60:2 84:11 116:19 Washington 2:17 23:7 wasn't 17:1 20:15,19 49:20 68:20 71:10 83:8 way 13:23 18:7 19:17 20:17,18 26:7,7 36:6 45:7 55:1,25 58:20 59:2 60:9 64:4 67:13 70:14 72:21 75:19 | X X 31:1 Y yeah 11:13 27:22 30:18 31:4 37:25 41:8,12 43:2,4 44:20 66:11 71:23 75:8,25 76:5 80:10 91:4,6,12,14 104:9 105:23 122:19 year 121:14 years 5:25 6:6,9,14 12:10 15:6 22:22 41:9 45:21 59:4 60:6 72:16 80:6 York 6:4 \$ \$100,000 101:19 \$2,831,695 108:13 \$223,000 114:23 \$36,043,436 109:2 \$46,220,167 108:21 \$7,254,293 109:7 0 00312 93:11,12 01900 114:6 02108 2:4 02110-3342 2:10 | | |

| | | | | |
|---|--|---|--|--|
| 65:24 67:1 74:7 13.2 28:18 29:5 31:18 32:14 33:13 35:2,5 43:21 53:6 54:13 55:14,19 56:7,25 57:24 65:10,24 67:1 74:7,14 96:6,11 110:24 116:14 13.3 31:22 94:4 95:15 95:16 14 3:23 105:21 14B 74:24 76:6 14.2 32:9 15 3:24 16 3:25 17 4:2 25:15 26:25 74:11,12 81:23 18 4:3 46:12,14,21,23 47:13,22,24 48:5 49:13,18,25 50:18 52:12,15,17,22 77:9 78:23,23 19 4:4 1900 2:17 1970 6:10,15,16 1975 6:16,17 1977 6:11,18 1980 6:21,25,25 9:4 1999 7:2 10:18 12:13 15:25 25:15 26:25 31:24 32:19 44:2 46:12,14 52:12 77:13 78:2,11,12 81:9 85:4 86:18 87:5 89:4,18 89:23 93:6 96:25 116:11 117:3 <hr/> 2 <hr/> 2 3:11 12:24 27:4 28:11 75:10 96:4 99:20,24 100:6 104:25 105:7 116:11 118:12 2A 97:22 2B 98:2 2.8 110:5,6 20 80:4,7 96:25 2000 81:23 2001 120:15 121:18 2002 105:19 2003 111:15,17 114:4 2003 6 2:17 2004 107:22 2005 1:14 5:3 202-861-0740 2:18 21 111:17 215 2:16 220 32:20 24 29:11 111:15 25 14:4,11 15:12 78:2 | 78:11,21 79:1 26 3:11 31:24 32:19 74:7 27 78:12 87:5 89:18,21 28 1:14 5:3 29 3:12 2900 1:16 5:4 127:7 <hr/> 3 <hr/> 3 3:12 29:20 30:16,18 31:6,17 32:8 33:15 34:5,7,15,22 35:8 39:20 77:13,23 3:30 103:2 30 2:10 15:14 107:22 127:14 30th 15:14 31 3:13 33607 127:7 33629 5:18 36 32:7 36:9 39:9 67:7 67:9,9 71:5,12 36-month 66:25 67:4 67:13 90:8 93:23 94:14 370 85:20 388 12:15 <hr/> 4 <hr/> 4 3:13 32:18,21 33:25 34:23 35:1,4,8,14 36:5 38:7,18,22 44:12 74:8 114:4 4:12 1:17 123:10 402 12:15 41 3:14 43 109:11 115:19 4810 5:17 491 111:19 4920 111:19 4982 27:2 <hr/> 5 <hr/> 5 3:2,14 42:23 43:6 46:6,9 52:21 91:2 99:22,23 100:6 5.2 79:4 5.3 79:4,6,9,12 5/18/99 48:2 5:30 127:17 50 115:17,19 116:4 5000 120:17 50001 120:17 501(c)(3) 7:21 <hr/> 6 <hr/> 6 3:15 75:1 76:10,24 90:21 93:5 95:22 60 93:18 | 617)451-8900 127:1 617-589-3810 2:5 617-951-2009 2:11 <hr/> 7 <hr/> 7 3:16 44:2,10,20 45:10 47:9,11 77:14 81:12 7.2 110:20 74 3:15 77 3:16 78 3:17 <hr/> 8 <hr/> 8 3:17 75:7 78:3,13 8:30 127:17 81 3:3,18 85 3:19 87 3:20 <hr/> 9 <hr/> 9 3:18 75:8 81:13 120:15 9:32 1:17 5:3 97 3:21 | | |
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Page 128

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3

4 VANTAGE FINANCIAL SERVICES, :
5 INC., :

6 Plaintiff, : CASE NO.: 04-11686-WGY
7 vs :

8 NONPROFIT SERVICE GROUP and :
9 GEORGE MILLER, :

10 Defendants. :
11 ----->

12 CONTINUED DEPOSITION
13 OF: JAY FLEISHER, ESQUIRE
14 TAKEN: Pursuant to Notice by
15 Counsel for Plaintiff

16 DATE: November 9, 2005

17 PLACE: Shriners Hospital
18 2900 Rocky Point Drive
19 Tampa, Florida

20 TIME: 1:15 p.m. to 2:55 p.m.

21 REPORTED BY: Shelly Noriega, RPR
22 Notary Public
23 State of Florida at Large
24
25

Volume 2

Pages 128 - 200

Page 130

INDEX

PAGE

| | | |
|---|---------------------------------|----------|
| 3 | Examination by Mr. Griffin..... | 131, 194 |
| 4 | Examination by Mr. Johnson..... | 167, 195 |
| 5 | Certificate of Reporter..... | 198 |
| 6 | Errata Sheet..... | 199 |
| 7 | Read and Sign Letter..... | 200 |

INDEX OF EXHIBITS

| 10 | NUMBER | PAGE |
|----|----------------|------|
| 11 | 20 Memo..... | 132 |
| 12 | 21 Memo..... | 134 |
| 13 | 22 Letter..... | 137 |
| 14 | 23 Letter..... | 138 |
| 15 | 24 E-mail..... | 139 |
| 16 | 25 E-mail..... | 144 |
| 17 | 26 Memo..... | 146 |
| 18 | 27 E-mail..... | 148 |
| 19 | 28 E-mail..... | 150 |
| 20 | 29 E-mail..... | 151 |
| 21 | 30 Letter..... | 154 |
| 22 | 31 Letter..... | 156 |
| 23 | 32 Labels..... | 157 |
| 24 | 33 E-mail..... | 159 |
| 25 | 34 Fax..... | 164 |

Page 129

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2 (Appearing by telephone)
3

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Page 131

1 The continued deposition of JAY FLEISHER, ESQUIRE,
2 taken pursuant to notice by counsel for the Plaintiff, on
3 November 9, 2005, commencing at 1:15 p.m., at Shriners
4 Hospital, 2900 Rocky Point Drive, Tampa, Florida, before
5 Shelly Noriega, RPR, Notary Public, State of Florida at
6 Large.

EXAMINATION

8 BY MR. GRIFFIN:

9 Q You understand you are still under oath from
10 your prior deposition?

11 A Yes, sir

12 Q I'd just like to start by marking Exhibit

13 Number 20, which is going to be the June 14, 2002,
14 memorandum to Mr. Fleisher from Paul Gramblin. Begins
15 with SHC01514. If you could give that to the reporter
16 and have her mark it and let me know when you have had a
17 chance to look at it.

18 A 2152?

19 Q 01514.

20 MR. CANTER: Kind of cropped off on the
21 photocopy, by the way.

22 THE DEPONENT: Yeah, half of it got cut off.

23 MR. GRIFFIN: I'm going to try and take these
24 in order as I sent them.

25 THE DEPONENT: Do you want me to give her the

Page 132

1 whole stack and the rest of the two pages attached
2 to that?

3 MR. GRIFFIN: Yes. That will be Exhibit Number
4 20, I believe.

5 BY MR. GRIFFIN:

6 Q Mr. Fleisher, can you look at that document and
7 tell me if you recognize it?

8 A Yes, I do.

9 Q Was there something humorous about receiving a
10 customer satisfaction survey from Vantage?

11 MR. JOHNSON: Object to the form. Before you
12 answer, I will address this question to the court
13 reporter. Having in mind we're doing this by
14 telephone, Madam Reporter, would you like us to
15 identify us -- who the speaker is before we say
16 something? Or can you, at least with the people who
17 are not there in your presence, tell anything --

18 THE COURT REPORTER: I'm able to discern it so
19 far. I'll let you know if I have a problem.

20 A We thought it incongruous that we had been
21 asked to fill out a customer satisfaction survey after
22 events that had taken place before then which indicated
23 to us that the service was not what it should have been
24 from Vantage.

25 BY MR. GRIFFIN:

Page 134

1 board meetings we were having -- the board meetings that
2 we had subsequent to this would have been the end of
3 June. Burt Oien said on July 2 that he had advised Paul
4 Gramblin to trash this. Throw it away.

5 Q And you had a discussion with Burt Oien
6 concerning this?

7 A Yes, I did.

8 Q Do you recall what Mr. Oien said to you beyond
9 what's reflected in the note?

10 MR. JOHNSON: Objection to the form.

11 A No.

12 BY MR. GRIFFIN:

13 Q Is it fair to say if the answers to the survey
14 had, in fact, been filled out they wouldn't have been
15 positive?

16 MR. JOHNSON: Objection to the form.

17 A They would not have been positive in many
18 respects.

19 BY MR. GRIFFIN:

20 Q I would like to mark as Exhibit Number 21 the
21 October 17, 2002, memorandum to Mr. Fleisher from Paul
22 Gramblin. Begins with Bates Number SHC03053.
23 Mr. Fleisher, this is a memorandum concerning the mailing
24 of holiday cards; is that correct?

25 MR. JOHNSON: Objection to the form.

Page 133

1 Q What events are those you're referring to?

2 MR. JOHNSON: Objection to the form.

3 A Well, there are the materials that you had
4 provided. Mainly sending out some sloppy material to
5 prospective donors, printing up one million copies of a
6 particular mail-out that had the wrong phone number on it
7 for the hospitals, sending out more mailing numbers than
8 the contract would have allowed. That's primarily what
9 it was.

10 MR. JOHNSON: Just so it's clear on the record,
11 my objection to the form with respect to this
12 question is specifically addressed to the lack of
13 foundation that this witness has personal knowledge
14 and is competent to testify to this matter.

15 BY MR. GRIFFIN:

16 Q Looking at Exhibit 20, Mr. Fleisher, there is a
17 handwritten note on the bottom there. Do you see that?

18 A Yes.

19 Q Is that your handwriting?

20 A Where it says "your copy forwarded to JF at
21 session"? That?

22 Q Mine says "at board meeting."

23 A Okay. That's mine. That one is my notes.

24 Q Can you read that note to me?

25 A Yeah. "At board meeting" which meant at the

Page 135

1 A Yes, it is.

2 BY MR. GRIFFIN:

3 Q Do you recognize this document?

4 A Yes, I do.

5 Q In the document Mr. Gramblin refers to
6 deception on the part of Vantage. Do you know what he's
7 referring to?

8 MR. JOHNSON: Objection to the form.

9 A Not precisely. That's too long ago to remember
10 that.

11 BY MR. GRIFFIN:

12 Q Do you recall what, if any, issues surrounded
13 this holiday card mailing?

14 MR. JOHNSON: Objection to the form. Lack of
15 foundation, among other deficiencies.

16 A At that point I was one of the three folks who
17 were required to review each mailing together with the
18 approval form, and from reviewing the approval form as
19 against what was known as the pro forma, I could not
20 ascertain whether that was the correct amount of holiday
21 cards to be mailed.

22 BY MR. GRIFFIN:

23 Q The note on the bottom of that Exhibit 21, is
24 that your handwriting?

25 A Yes, it is.

Page 136

1 Q Can you just read that note for me, please?

2 A "Paul, at this point things are so confused I
3 have no idea if Vantage is sticking to the revised pro
4 forma. I cannot tell if they are sending out more or
5 less than agreed to. I'm not signing off on any of
6 this."

7 Q Why were you having difficulty figuring out
8 whether the pro forma was being followed?

9 A This part I do recall distinctly. It was
10 because of the way that the document called "Shriners
11 Hospitals for Children Campaign Approval," which consists
12 of three pages, was filled out.

13 It made it very difficult to -- this was a
14 persistent problem with Vantage -- to match up the
15 numbers and the costs and so forth on the third page of
16 that document, which the -- with the amended pro forma of
17 the contract that said how many mailings would be, what
18 the cost would be, total cost, so forth and so on.

19 Q If you look at SHC03058, which is contained in
20 that exhibit --

21 A Yes.

22 Q -- is that an example of the campaign approval
23 form you were talking about?

24 A Yes.

25 Q And on this approval form it indicates that

Page 138

1 BY MR. GRIFFIN:

2 Q On the second page of that exhibit, the first
3 paragraph, you look -- look at that, please.

4 A I'm looking at it.

5 Q Was there an issue regarding Vantage's failure
6 to remove names from the mailing list?

7 A Yes.

8 Q What was the problem with that?

9 MR. JOHNSON: Objection to the form. Lack of
10 foundation.

11 A The problem was many folks -- not many but
12 folks -- certain folks were on the mailing list that
13 Vantage -- to whom Vantage mailed the material and the
14 department of development would receive, or sometimes
15 they would forward it to me, requests or directions from
16 the people who received that material to be taken off
17 their mailing list and to not be solicited again.

18 We had expected that after letting Vantage know
19 that a particular person should be taken off the mailing
20 list that the person would be taken off at least before
21 the next mailing, and in some instances that did not
22 occur.

23 BY MR. GRIFFIN:

24 Q Let me mark Exhibit 23, which is a February 3,
25 2003, letter from Paul Gramblin to Ms. Lalak Deckman.

Page 137

1 mail quantity of 600,000 is X'd out and 750,000 was
2 replaced; is that correct?

3 MR. JOHNSON: Objection to the form.

4 A That's what it would indicate.

5 BY MR. GRIFFIN:

6 Q So was Vantage proposing to sent out an extra
7 150,000 holiday card mailings?

8 MR. JOHNSON: Objection to the form. Lack of
9 foundation.

10 A I don't know who crossed out 600,000 to
11 750,000, but from reading the materials, that refreshed
12 my recollection that this was a big problem with me that
13 Vantage was trying to get approval for an additional
14 150,000 cards mailed out without our approval.

15 BY MR. GRIFFIN:

16 Q I want to mark the next Exhibit 22, which is a
17 November 4, 2002, letter from Mr. Fleisher to Lawrence
18 Lyon at Vantage. Begins with Bates Number SHC01727. Do
19 you recognize this document?

20 A Yes, I do.

21 Q And was this letter sent to Mr. Lyon who
22 addressed the holiday mail cards we just talked about?

23 A Yes.

24 MR. JOHNSON: Object to the form.

25 A Yes.

Page 139

1 Begins with SHC01682. Do you recognize this document and
2 the attachments?

3 A Yes, I do.

4 Q Are these documents -- document an example of
5 consumer complaints regarding the failure of Vantage to
6 remove names from the mailing list?

7 MR. JOHNSON: Objection to the form.

8 A Yes, they do.

9 BY MR. GRIFFIN:

10 Q In your opinion, what impact does this type of
11 error have on the Shriners?

12 MR. JOHNSON: Objection to the form.

13 A Negative publicity with the general public
14 which could impact on decreased donations. It's negative
15 public relations primarily.

16 BY MR. GRIFFIN:

17 Q Next I want to mark Exhibit 24. It is a
18 February 3, 2003, e-mail to you from Bill Fawcett and
19 others. Begins with Bates Number SHC02910. Do you
20 recognize this document?

21 A Yes, I do.

22 Q First line says "both of Paul's and Bill's
23 statements about percentages are true." Can you tell me
24 what that refers to?

25 MR. JOHNSON: Objection to the form.

Page 140

1 A "Both of Paul's and Bill's statements about
2 percentages are true." I would have to read what Paul's
3 and Bill's statements about percentages were.
4 BY MR. GRIFFIN:
5 Q Okay.
6 A Yes. It pertains to making the same mistake
7 over and over regarding removing folks from the mailing
8 list, and also incorrectly referring that 93 percent of
9 our annual operating budget went to direct patient care.
10 Q Does it also refer to the fact that Vantage was
11 claiming that only 13 cents out of every dollar was for
12 fundraising cost?
13 MR. JOHNSON: Objection to the form. Lack of
14 foundation.
15 A The message from Bill Fawcett with a copy to me
16 indicates that. Well, not exactly. It says Bill Fawcett
17 said to me "Bill says I think they" -- being Vantage --
18 "should use 13 cents out of every dollar you contribute
19 through this direct mail program goes to Shriners
20 Hospital. The remaining goes to fundraising cost.
21 Aren't we supposed to tell the truth?"
22 BY MR. GRIFFIN:
23 Q So in the mailings that Vantage was making on
24 behalf of the Shriners, were they making representations
25 as to what percentage of every dollar went to the

Page 141

1 Shriners as opposed to fundraising costs?
2 MR. JOHNSON: Objection to the form. Lack of
3 foundation and also violation of the Best Evidence
4 Rule.
5 A I cannot recall whether they made it an actual
6 mailing that had the 93 percent stated as going to the
7 hospitals for operating expenses. I do know that in my
8 review, Mr. Fawcett's review and Mr. Gramblin's review of
9 a certain of the fundraising materials Vantage sent to us
10 for review, that statement was made and we -- primarily
11 me -- requested that that statement be removed.
12 BY MR. GRIFFIN:
13 Q Would you agree that it was in Vantage's best
14 interest as far as profit to mail out the most expensive
15 item as possible?
16 MR. JOHNSON: Objection to the form.
17 A I have no idea what's in Vantage's best
18 interest.
19 BY MR. GRIFFIN:
20 Q For example, this e-mail refers to t-shirts at
21 \$4.50 apiece that were mailed out. And in the second
22 paragraph, second-to-last sentence says "higher the item
23 cost to you the greater the chance that donations won't
24 cover cost." Do you see that?
25 A Yes.

Page 142

1 Q Can you tell me what that means?
2 MR. JOHNSON: Objection to the form.
3 A Exactly what it says. It says if the item
4 costs -- if Shriners Hospitals for Children paid more for
5 a particular item that was mailed out, and it was -- the
6 greater the possibility that donations would not cover
7 the cost because if you -- if you -- if it cost you more
8 to make a mailing in the way of including an item that
9 cost more money than other items, then of course the
10 chances were that the donations received in response to
11 that mailing would not cover the cost. I mean, if your
12 costs are more than your intake it's not going to cover
13 the cost.
14 BY MR. GRIFFIN:
15 Q Likewise, the more mailings you send out the
16 cost would be increased?
17 A Total cost?
18 Q Total cost.
19 MR. JOHNSON: Objection to form.
20 A Yes.
21 BY MR. GRIFFIN:
22 Q And the higher cost either on a per-item basis
23 or a total cost basis, the higher the cost the more money
24 that Vantage gets reimbursed in the mailing, correct?
25 MR. JOHNSON: Objection to the form.

Page 143

1 A That's correct.
2 BY MR. GRIFFIN:
3 Q Do you recall Vantage proposing to increase the
4 t-shirt test mailing from 10,000 to 60,000?
5 A Yes, I do.
6 Q Was that mailing actually made at 60,000?
7 A I can't remember right at the moment.
8 Q Do you recall whether it was approved?
9 A I can't recall right at the moment. I mean, I
10 can't recall it now.
11 Q Going down on that e-mail to the e-mail from
12 Paul Gramblin to Bill Fawcett and you on the 13th. There
13 is a sentence in there that begins "also Burt advised."
14 Do you see that?
15 A Okay. Which one is this?
16 Q It's the second e-mail. Paul Gramblin's
17 e-mail.
18 A Paul Gramblin to Bill Fawcett and myself and
19 the second sentence is "also Burt informed me that."
20 Yes.
21 Q The next sentence refers to some mailing jobs.
22 A Mmm-hmm.
23 Q Were there issues with Vantage sending out
24 those mailings?
25 MR. JOHNSON: Objection to the form.

Page 144

1 A Yes.

2 BY MR. GRIFFIN:

3 Q What were the problems with those mailings?

4 MR. JOHNSON: Objection to the form. Lack of
5 foundation.

6 A I don't recall right at the moment. I would
7 have to review them -- the materials.

8 BY MR. GRIFFIN:

9 Q There is a reference to the pro forma. Do you
10 recall whether those mailings were reflected in the
11 original pro forma?

12 MR. JOHNSON: Objection to the form.

13 A No. But I'm looking at a February 18 e-mail
14 that pretty much sets everything out as far as the
15 problem.

16 BY MR. GRIFFIN:

17 Q All right. Let's mark that as the next
18 exhibit. Begins SHC02909. That's Number 25. Does
19 Exhibit Number 25 refresh your recollection as to what
20 the issues were that were raised in the Exhibit 24?

21 A Yeah. Let me read it again. I just scanned
22 these materials before the deposition. Yes, I remember
23 that now.

24 Q Does that refresh your recollection as to
25 whether the mailings referred to in Exhibit 24 are in

Page 146

1 A That's correct.

2 Q In the next paragraph there is a reference to a
3 quote, roll out, end quote, of 500,000 of something at
4 2.95 each. Do you see that?

5 A It actually says 50,000 at -- oh, 500,000 of
6 something at 2.95 each, correct. Yeah, I see that now.
7 Yes.

8 Q Do you have any recollection as to what that
9 something was?

10 MR. JOHNSON: Objection to the form. Lack of
11 foundation.

12 A I don't recall.

13 BY MR. GRIFFIN:

14 Q The next paragraph, last line, states "rather I
15 see what are apparently random selections of approval
16 forms for us to sign." Can you tell me what you meant by
17 that?

18 MR. JOHNSON: Objection to the form.

19 A What I meant by that is we were receiving
20 approval forms to approve certain mail-outs that were not
21 provided in the pro forma as under the contract.

22 BY MR. GRIFFIN:

23 Q I want to mark as Exhibit Number 26 a March 11,
24 2003, memorandum to you, Bill Fawcett from Paul Gramblin.
25 Begins with Bates Number SHC01670. Do you recognize this

Page 145

1 compliance with the pro forma?

2 A Yes, it does.

3 Q What do you remember about that?

4 A That they did not in some respects.

5 Q How did they not comply?

6 A As far -- didn't comply in some respects as to
7 the number set out or the cost of some items being sent
8 out and whether or not the pro forma even permitted
9 certain items to be sent out.

10 Q If you look at the fourth paragraph of that
11 e-mail, Exhibit Number 25, there is a reference to a
12 mailing of 150,000 more letters asking people if they
13 wanted t-shirts. Do you see that?

14 A Yes, I do.

15 Q Do you know if that mailing was ever made?

16 A I don't recall.

17 Q According to this e-mail that mailing was not
18 in the original pro forma; is that correct?

19 A That's correct.

20 MR. JOHNSON: Objection to the form.

21 A Sorry.

22 MR. JOHNSON: Objection to the form.

23 BY MR. GRIFFIN:

24 Q Is it accurate that there was no record of the
25 committee's approving of that mailing?

Page 147

1 document?

2 A Yes, I do.

3 Q Did you have any discussion with Mr. Gramblin
4 concerning the content of this memorandum?

5 A I don't recall that I did or did not.

6 Q Did you ever reach an opinion that Vantage was
7 engaging in fraud?

8 MR. JOHNSON: Objection to the form.

9 A I can't recall one way or the other if I ever
10 made that statement and, if I made it, who I would have
11 made it to.

12 BY MR. GRIFFIN:

13 Q Apart from conversations you may have had
14 regarding this memorandum, did you reach any conclusions
15 yourself as to whether Vantage was engaging in fraud?

16 MR. JOHNSON: Objection to the form. Lack of
17 foundation.

18 A No, I didn't. I did not reach any such
19 conclusion.

20 BY MR. GRIFFIN:

21 Q Do you have any idea as to what Paul Gramblin
22 was referring to when he said parallels could be drawn to
23 Vantage?

24 MR. JOHNSON: Objection to the form.

25 A Yes, I do.

Page 148

1 BY MR. GRIFFIN:
2 Q What's your understanding of that?
3 A My understanding was that the articles
4 mentioning that supreme court case that was to be
5 considered dealt with telemarketers who did not inform
6 the people they were soliciting that 85 percent of the
7 funds contributed through the telemarketers went to the
8 company, and made a comparison to the information being
9 prepared and sent out by Vantage which did not advise the
10 prospective donors to the materials they sent out on our
11 behalf that about 93 cents of every dollar collected was
12 going to Vantage's costs.
13 Q Does that document refresh your recollection as
14 to whether Vantage actually sent out mailings that stated
15 that 93 cents out of every dollar?
16 A No, it does not.
17 Q I would like to mark as the next exhibit a
18 March 13, 2003, e-mail from Mr. Fleisher.
19 A March 13?
20 Q Yes. It's Bates Number SHC01667.
21 A That says March 10.
22 Q On the top, very top, it says March 13, 2003.
23 A Yeah. Okay.
24 Q Do you recognize this document?
25 A Yes, I do.

Page 149

1 Q Does this document reflect another example of
2 Vantage failing to remove names from the mailing list?
3 MR. JOHNSON: Objection to the form.
4 A Yes, it does.
5 BY MR. GRIFFIN:
6 Q Do you recall anything about the particular
7 circumstances of this individual as being discussed in
8 this e-mail?
9 A Yes, I do.
10 Q What's your recollection of that?
11 MR. JOHNSON: Objection to the form. Lack of
12 foundation that this witness has knowledge that's
13 personal and that he's competent to testify to the
14 matter.
15 A I was informed that the fellow was writing what
16 was termed bogus checks in response to the solicitations
17 that came out to him subsequent to his request to have
18 his name removed from the mailing list.
19 BY MR. GRIFFIN:
20 Q And Vantage continued to send mailings to this
21 individual?
22 MR. JOHNSON: Objection to the form.
23 A I do not know if Vantage continued to send
24 mailings to this individual. Subsequent to March 13,
25 2003, I do know that Vantage continued to send mailings

Page 150

1 to this individual after we had requested his name be
2 removed and through a number of times subsequent to the
3 first request that we had made to remove his name.
4 BY MR. GRIFFIN:
5 Q And the cost of those multiple mailings to this
6 individual, those would be reimbursed to Vantage?
7 MR. JOHNSON: Object to the form.
8 A Well, we -- those mailings that -- any mailing
9 that was made out was part of the cost of a mailing that
10 Vantage would do on our behalf, and they would submit the
11 invoices and we would pay the invoices. So to the extent
12 that any particular one was made to an individual whose
13 name had been requested then, however small, Vantage was
14 being paid for that.
15 BY MR. GRIFFIN:
16 Q I would like to mark as the next exhibit April
17 30, 2003, e-mail from Paul Gramblin to Mike Andrews.
18 Bates SHC01620. Mr. Fleisher, you are a CC on this
19 e-mail, correct?
20 A Yes, I am.
21 Q Do you recognize this document?
22 A Let me -- If I have a moment to review it.
23 Yes, I do.
24 Q Can you tell me what the Second Chance videos
25 were?

Page 151

1 MR. JOHNSON: Objection to the form. Lack of
2 foundation.
3 A The Second Chance videos were videos that were
4 created by the Shriners Hospitals for Children's public
5 relations department to portray Shriners Hospitals for
6 Children in a favorable light to the public.
7 BY MR. GRIFFIN:
8 Q This e-mail refers to 10,000 of those being
9 returned to the Shriners; is that correct?
10 A No. The 10,000 were mailed out -- of those
11 were mailed out and then a certain number of those,
12 doesn't recite there, were being returned by people, the
13 people who were solicited.
14 Q Do you know the reason why those videos were
15 returned?
16 MR. JOHNSON: Objection to the form.
17 A No.
18 BY MR. GRIFFIN:
19 Q Next I want to mark June 20, 2003, e-mail from
20 Paul Gramblin to Bill Fawcett, CC to Mr. Fleisher.
21 Begins SHC01615. Do you recognize this document?
22 A Yes, I do.
23 Q This e-mail refers to an issue regarding a
24 mailing of t-shirts; is that correct?
25 MR. JOHNSON: Objection to the form. Lack of

Page 152

1 foundation.
2 A Yes, it does.
3 BY MR. GRIFFIN:
4 Q Can you tell me what the circumstances
5 underlying that t-shirt mailing were?
6 MR. JOHNSON: Objection to the form. Lack of
7 foundation. And, in particular, no testimony that
8 this witness has personal knowledge of the matter or
9 is competent to testify to it.
10 A I would have to refresh my recollection from
11 reading this.
12 BY MR. GRIFFIN:
13 Q Sure.
14 A Yes. I recall now the problem was in
15 fulfillment of the request for t-shirts. The mail-out
16 would be made whereby an individual was requested to mail
17 something back if they'd like to receive a t-shirt, and
18 then Shriners Hospitals for Children would be charged as
19 a part of the cost whatever t-shirts were mailed. And
20 there was a problem that a number of individuals sent in
21 those cards to indicate that they did want to receive
22 those, and it was not fulfilled within a timeframe we
23 expected.
24 BY MR. GRIFFIN:
25 Q Going down further on the exhibit there is a

Page 153

1 June 6, 2003, e-mail from Bill Fawcett to Paul Gramblin,
2 CC to you. Do you see that?
3 A Yes, I do.
4 Q In the first line it sounds like they have
5 screwed up another batch of credit card donations. Do
6 you know who "they have" refers to?
7 MR. JOHNSON: Objection to the form. Lack of
8 foundation. And particularly lack of foundation
9 that this witness might know what Mr. Fawcett was
10 referring to.
11 A I have worked with Bill Fawcett in excess of 15
12 years and from the tone of that paragraph I have
13 absolutely no doubt that the "they" he is referring to is
14 Vantage.
15 BY MR. GRIFFIN:
16 Q Do you recall having any conversations with
17 Bill Fawcett regarding the processing of credit card
18 donations?
19 A Yes, I do.
20 Q Were there some problems with respect to
21 Vantage's processing of credit card donations?
22 MR. JOHNSON: Objection to the form.
23 A I do not recall any specific problems.
24 Q What was the issue in general?
25 MR. JOHNSON: Objection to the form.

Page 154

1 A I don't recall. All I recall is that there was
2 a problem with the credit card processing. I don't
3 recall exactly what it was.
4 BY MR. GRIFFIN:
5 Q I want to mark next a November 26, 2003, letter
6 to John Kenney from Jay Fleisher.
7 A Is that the new material?
8 Q It's not the next item in the pile. It's the
9 item after that.
10 A Oh, November. Right.
11 MR. CANTER: This is Bates 03028.
12 MR. GRIFFIN: Bates 8149, Vantage prefix. We
13 skipped over that 03028.
14 MR. CANTER: Okay. Okay.
15 MR. JOHNSON: Are you coming back to that one
16 or can I put it aside?
17 MR. GRIFFIN: Put it aside. Thank you.
18 BY MR. GRIFFIN:
19 Q Earlier you referred to a problem with Vantage
20 listing an inaccurate telephone number on the mailings;
21 is that correct?
22 A That's correct. That's correct.
23 Q Does Exhibit 30 refer or document that
24 testimony?
25 A Yes, it does.

Page 155

1 Q Can you describe for me what the issue was with
2 that mailing?
3 A Approximately -- well, not approximately,
4 exactly a million mailings had been mailed out by
5 Vantage, and the text of the mailings was not reviewed by
6 myself, Mr. Gramblin and Mr. Fawcett ahead of time. And
7 the number that they put on the bottom of it, the
8 813-281-0306, is not the telephone number of the Shriners
9 Hospitals headquarters.
10 Q Whose telephone number was that?
11 A An individual person in Tampa. A female.
12 Q Did that individual receive telephone calls
13 from prospective donors?
14 MR. JOHNSON: Objection to the form.
15 A Yes, she did.
16 BY MR. GRIFFIN:
17 Q Do you have any idea as to the volume of
18 telephone calls she received?
19 MR. JOHNSON: Objection to the form.
20 A In excess of 20.
21 BY MR. GRIFFIN:
22 Q Did you speak with this individual yourself?
23 A I can't recall. I think I did but I can't
24 recall precisely.
25 Q What, if anything, was done to rectify that

Page 156

1 situation?

2 **A** Something was arranged whereby the phone -- I

3 think -- I can't be precise. Something was done to

4 reroute the phone calls on that number to, I think, our

5 headquarters but I can't be -- I'm not sure of that.

6 **Q** Do you recall Vantage agreeing to install an

7 answering service in this individual's home?

8 **A** Yes, I do.

9 **Q** Is that part of the final settlement agreement

10 with Vantage?

11 **A** Yes, it was.

12 **Q** Next I want to mark October 2, 2003, letter

13 from Paul Gramblin to Larry Lyon with CC to Mr. Fleisher.

14 SHC02029. Do you recognize this letter?

15 **A** Yes, I do.

16 **Q** This letter refers to a recipient receiving a

17 calendar in a wrinkled and torn state. Do you see that?

18 **A** Yes, I do.

19 **Q** Do you recall the circumstances of that?

20 **MR. JOHNSON:** Objection to the form. Lack of

21 foundation.

22 **A** It was part of a batch where I myself saw the

23 calendars that went out which had similar problems as

24 described in Mr. Gramblin's letter of October 2.

25 **BY MR. GRIFFIN:**

Page 157

1 **Q** Again, in your opinion, how does that reflect

2 on the Shriners?

3 **A** Negatively. It's bad publicity to do such

4 sloppy work.

5 **Q** Next I want to mark the sheet of labels that's

6 Bates Number Vantage 12456 through 12457. Mr. Fleisher,

7 can you tell me what this document is?

8 **A** Yes. It's a typical type of return address

9 labels that Vantage would send out on occasion so people

10 could use them as return envelope stickers and ask them

11 to make a contribution to Shriners Hospitals.

12 **Q** On the second page, Bates 12457, on the

13 right-hand side in bold it says "remarkably only three

14 cents of every dollar goes to fundraising and

15 administration, an incredibly low figure of which we are

16 very proud." Do you see that?

17 **A** Yes, I do.

18 **Q** Does this document refresh your recollection as

19 to whether Vantage actually made mailings containing that

20 statement?

21 **A** In that instance they did. It does refresh my

22 recollection.

23 **Q** And that's something that would not have been

24 approved by the Shriners, correct?

25 **MR. JOHNSON:** Objection to the form.

Page 158

1 **A** It would not have been approved by me.

2 **BY MR. GRIFFIN:**

3 **Q** Did you ever learn or come to find out what the

4 actual percentage of per dollar donation that was

5 retained by Vantage at the end of the program?

6 **A** Yes, I did. That was submitted in the previous

7 deposition as an exhibit.

8 **MR. CANTER:** This is Mac Canter. Let me note

9 this is a generic statement referring to all the

10 revenues of Shriners, not necessarily revenues

11 pertaining to the mail program.

12 **MR. GRIFFIN:** I'm glad you noticed that, Mac.

13 So did I.

14 **MR. CANTER:** Just so we're clear. I just want

15 to make sure there's a point of clarity.

16 **MR. GRIFFIN:** Okay.

17 **BY MR. GRIFFIN:**

18 **Q** To your knowledge, Mr. Fleisher, this is a

19 mailing that was sent out by Vantage on behalf of the

20 Shriners, correct?

21 **A** No. I can't recall if it was or was not sent

22 out, and if it had been reviewed by me ahead of time it

23 definitely would not have been sent out in its form

24 presented.

25 **Q** My question that time was, though, you can tell

Page 159

1 this was something that was created by Vantage, though,

2 correct?

3 **MR. JOHNSON:** Objection to the form.

4 **A** Yes, I can.

5 **BY MR. GRIFFIN:**

6 **Q** I don't think I got an answer to my prior

7 question as to what percent of every dollar was paid to

8 Vantage under the program.

9 **MR. JOHNSON:** Objection to the form.

10 **A** About -- well, approximately 93 percent.

11 **BY MR. GRIFFIN:**

12 **Q** I want to mark the next exhibit. March 15,

13 2001, e-mail from Mr. Fleisher to Bill Fawcett. Begins

14 SHC01253. Aside from the cost of the postage for

15 mailings made under the agreement, what other costs

16 were -- was Vantage reimbursed?

17 **A** Besides the postage they were reimbursed their

18 charge to us for creation of the materials that were made

19 out, printing of it, thinking of it, so forth, and they

20 also charged us bank fees where there's a holding account

21 where these funds were sent in by individuals and then

22 there was a fee for the bank to do that and that got

23 charged back to us by Vantage.

24 **Q** Was it your understanding that Vantage paid

25 that fee out and then Shriners was billed for it and

Page 160

1 reimbursed Vantage?

2 **A That was what was represented to us by the**

3 **folks at Vantage.**

4 **Q Was the reality of the situation something**

5 **different?**

6 **MR. JOHNSON: Objection to the form.**

7 **A I don't know. I could not tell what they**

8 **were -- I did not -- we could not investigate that. I**

9 **couldn't get the information.**

10 **BY MR. GRIFFIN:**

11 **Q If you look at the exhibit we just marked,**

12 **there is an e-mail further down from Bill Fawcett dated**

13 **March 15, 2001. Mr. Fawcett writes in the second line**

14 **"Basically since we have taken control of the banking,**

15 **you stopped paying their 'bank charge' fees of 18 cents**

16 **per item. This was seen as direct profit for Vantage, as**

17 **the credits received for balances in the accounts**

18 **substantially outweigh all actual charges from the bank."**

19 **Does that refresh your recollection as to**

20 **whether Vantage was actually paying the bank fees?**

21 **MR. JOHNSON: Objection to the form. Lack of**

22 **foundation.**

23 **A I don't recall if they were actually paying the**

24 **bank fee. What I do recall is when we went to our own**

25 **collection bank, the fees were substantially less than 18**

Page 161

1 **cents an item.**

2 **BY MR. GRIFFIN:**

3 **Q Who was originally doing the bank processing**

4 **under the agreement?**

5 **A I think it was State Street Bank did it**

6 **initially. It was in the agreement and then it was**

7 **changed after that.**

8 **Q Was State Street selected by Vantage?**

9 **A Yes. The first bank it was was selected by**

10 **Vantage.**

11 **Q And at some point the banks changed; is that**

12 **correct?**

13 **A Yes, they did.**

14 **Q Who did it change to?**

15 **A I can't recall who it changed to. I would have**

16 **to go through the file.**

17 **Q What was the reason for the change in the**

18 **banks?**

19 **MR. JOHNSON: Objection to the form.**

20 **A Again, Vantage represented us -- to us that**

21 **something had occurred with their -- I believe with their**

22 **arrangement with State Street or State Street -- I think**

23 **it was State Street was not going to be doing this type**

24 **of collection business any longer and so that a bank -- a**

25 **different bank would have to be located.**

Page 162

1 **BY MR. GRIFFIN:**

2 **Q Do you know if the money in the program account**

3 **generated interest?**

4 **A Not personally.**

5 **Q Is it your understanding that what Mr. Fawcett**

6 **is suggesting is that there was sufficient funds in the**

7 **program account which the bank used to pay their**

8 **processing charge but then Vantage billed the Shriners**

9 **for that anyway?**

10 **MR. JOHNSON: Objection to the form.**

11 **A That was Mr. Fawcett's conclusion as related to**

12 **me.**

13 **BY MR. GRIFFIN:**

14 **Q You discussed that with him?**

15 **A Yes, I did.**

16 **Q In the last paragraph of -- the last sentence**

17 **of the paragraph I was just reading from, Mr. Fawcett**

18 **also writes "therefore, we have always assumed that there**

19 **was profit built into several of the billing categories."**

20 **Do you see that?**

21 **A Yes, I do.**

22 **Q Do you know what other billing categories he's**

23 **talking about?**

24 **MR. JOHNSON: Objection to the form.**

25 **A There are numerous categories under the pro**

Page 163

1 **forma, such as printing charges and preparation charges.**

2 **If you review the pro forma attached to the contract it**

3 **would list all those various charges.**

4 **BY MR. GRIFFIN:**

5 **Q With respect to the 18 cent bank charge, does**

6 **that refer to every piece that was mailed out or only**

7 **those pieces that were received back to the bank?**

8 **A Only those that were received back by the bank,**

9 **to the best of my knowledge.**

10 **Q Prior to switching banks, do you have any idea**

11 **of how many donations were received that were subject to**

12 **the 18 cent bank charge figure?**

13 **A No, I do not.**

14 **MR. JOHNSON: Foundation.**

15 **BY MR. GRIFFIN:**

16 **Q Would you agree if you multiplied that number**

17 **of donations by 18 cents that would have represented pure**

18 **profit for Vantage?**

19 **MR. JOHNSON: Objection to the form.**

20 **A That was Mr. Fawcett's conclusion that he**

21 **related to me.**

22 **BY MR. GRIFFIN:**

23 **Q Do you have any reason to disagree with his**

24 **conclusion?**

25 **MR. JOHNSON: Objection to form.**

Page 164

1 A No, I don't.
 2 BY MR. GRIFFIN:
 3 Q Now, when the banks switched over, was there
 4 also a change in the mailing house?
 5 A I believe there was.
 6 Q Do you recall a switch to Merkle?
 7 A Yes, I do.
 8 Q And when the bank was switched and the switch
 9 was made to Merkle, was there any attempt by Vantage to
 10 raise its charges with respect to Merkle's services?
 11 MR. JOHNSON: Objection to the form.
 12 A Yes, there was.
 13 BY MR. GRIFFIN:
 14 Q What was the explanation for that?
 15 A That the charge for Merkle to them was going to
 16 be increased from what the charge to them was by the
 17 other mailing house.
 18 Q Were the Shriners provided any documentation of
 19 those charges and changes?
 20 MR. JOHNSON: Objection to the form. Lack of
 21 foundation.
 22 A I don't recall.
 23 BY MR. GRIFFIN:
 24 Q Next I want to mark a fax, May 21, 1999, to
 25 George Miller from Jay Fleisher.

Page 165

1 MR. CANTER: Matt, I don't have all these
 2 documents you're referring to. This is Mac Canter.
 3 My package doesn't contain some of these documents.
 4 MR. GRIFFIN: I e-mailed two additional
 5 documents. That last one and this is the last I'm
 6 going to use.
 7 MR. CANTER: When did you e-mail it?
 8 MR. GRIFFIN: Yesterday. Do you want a break
 9 and go take a look for it?
 10 MR. CANTER: Go ahead, and I can find it here
 11 on the screen. I'll look. Yeah, I've got it in
 12 front of me right now.
 13 BY MR. GRIFFIN:
 14 Q Do you recognize that document?
 15 A Yes, I do.
 16 MR. CANTER: Excuse me one second here. Let me
 17 print this thing out.
 18 BY MR. GRIFFIN:
 19 Q Mr. Fleisher, previously in your deposition we
 20 marked an Exhibit Number 12 which was a May 20, 1999,
 21 memorandum from you to John Nobles and others. Do you
 22 recall that exhibit?
 23 A Not precisely.
 24 Q Do you have those exhibits with you today?
 25 A No, I don't.

Page 166

1 Q Well, let me turn -- earlier in the deposition
 2 I read a passage from that memo. It said, quote, the
 3 final draft of the agreement has been prepared by me and
 4 is being faxed today to Vantage attorney for their final
 5 review, end quote. Do you see that statement? Is that
 6 correct? And your response is "yeah." Vantage's
 7 attorney, does that refer to George Miller?
 8 A Yes, it does.
 9 Q And then subsequently on May 21, 1999, you
 10 faxed to George Miller a draft of the agreement; is that
 11 correct?
 12 A That's correct.
 13 Q As reflected in the exhibit we just marked,
 14 correct?
 15 A That's correct.
 16 Q And, if you can, look at Page 14 of the draft
 17 agreement attached to the May 21, 1999, fax, if you
 18 would.
 19 A Yes, I have it.
 20 Q Page 14 there's a paragraph heading 13.1,
 21 "Termination Without Cause by Shriners;" is that correct?
 22 A Yes.
 23 Q And on Page 15 there's a paragraph 13.2
 24 "Termination For Any Other Reason;" is that correct?
 25 A Yes.

Page 167

1 MR. JOHNSON: Form.
 2 MR. GRIFFIN: Those are all the questions I
 3 have. Thank you.
 4 EXAMINATION
 5 BY MR. JOHNSON:
 6 Q Okay. I have a few questions, Mr. Fleisher.
 7 I'll try not to keep you longer than I have to, sir.
 8 First with respect to some of the things you were asked
 9 this afternoon. With regard to Exhibit 33, that's your
 10 memo to Mr. Fawcett --
 11 A Yes, I have it.
 12 Q Okay. I'm trying to read my own writing. Bear
 13 with me for a moment. The reference to Merkle in there,
 14 I think Mr. Griffin asked you a question whether Merkle
 15 was the mailing house. The reference in the exhibit is
 16 to Merkle as the caging vendor.
 17 Do you know what a caging vendor in the context
 18 of a fundraising for nonprofit organizations is?
 19 A Yes, I do. They were not the mailing house.
 20 They were the ones who received the responses from the
 21 solicited individuals with the funds enclosed.
 22 Q They were the organization that, I take it,
 23 received contributions, got them deposited into the
 24 account that Shriners had set up for that purpose and
 25 handled that function; is that right?

Page 168

1 **A That's correct.**

2 Q You don't have any knowledge as to whether they
3 were also the mailing house, do you?

4 **A I have no knowledge of that.**

5 Q Okay. And you have no direct knowledge beyond
6 the provisions that are in the agreement as executed as
7 to who pays the caging vendor for its services and
8 how -- if and to the extent that Vantage did so, Shriners
9 reimbursed Vantage?

10 **A Not that I can recall at the present time.**

11 Q Okay. And you don't have any personal
12 knowledge, I take it, that the actual method that was
13 followed and practiced differed in any respect from what
14 was provided in the agreement, do you, sir?

15 MR. GRIFFIN: Objection.

16 **A I don't recall that. No, I don't have any
17 personal recollection of it.**

18 **BY MR. JOHNSON:**

19 Q Let's go for a moment, if we may, to Exhibit
20 32. That's the set of labels and the promotional
21 materials that's attached as Vantage 12457. Now --

22 **A I've got it.**

23 Q Back to what is said in the promotional
24 materials, the reference to 516 million dollars, is it
25 your understanding that that figure was a figure with

Page 170

1 administration, is it your understanding that considered
2 in the context of the hospitals' total operating budget
3 of 516 million dollars, is it your understanding that
4 that was, in fact, true?

5 MR. GRIFFIN: Objection.

6 **A No, it was not true.**

7 **BY MR. JOHNSON:**

8 Q How much of Shriners' operating budget during
9 whatever period the 516 million dollars refers to -- how
10 much of Shriners 516 million dollar operating budget did
11 go to fundraising and administration?

12 **A Approximately nine cents of every dollar.**

13 Q Okay. Do you know whether that information has
14 been -- had been furnished to Vantage or not of your own
15 personal knowledge?

16 **A No.**

17 Q Did you know -- I take it as you sit here today
18 you know of nothing on the basis of which you could
19 testify of your own knowledge that this statement was not
20 believed by Vantage to be true when it was included in
21 the promotional materials, do you?

22 MR. GRIFFIN: Objection.

23 **A I received these materials from Paul Gramblin
24 in earlier form, I believe, and there was a memo from
25 myself to Paul Gramblin where I distinctly remember the**

Page 169

1 respect to what has been raised in program mailings or
2 was a figure with respect to Shriners total income from
3 contributions during some period of time?

4 **A Neither.**

5 Q What was your understanding that the 516
6 million dollars represented?

7 **A That was the operating budget to operate all 22
8 of the Shriners Hospitals.**

9 Q Okay. So I take it the operating budget to
10 operate all of the Shriners Hospitals consisted of both
11 contributions and income on whatever investment property
12 Shriners had and whatever compensation Shriners was
13 receiving from patients or from healthcare providers?

14 **A That's not correct.**

15 Q What did the operating income consist of, sir?

16 **A The operating income at that time consisted of
17 income both realized and unrealized from the Shriners
18 Hospitals for Children endowment fund and from bequests
19 and donations to Shriners Hospitals for Children.**

20 **It did not consist of any payments by patients,
21 nor payments from third parties such as insurance
22 companies or the government.**

23 Q Okay. Now, the statement on the -- on the
24 right-hand portion of the second page of Exhibit 32, only
25 three cents of every dollar goes to fundraising and

Page 171

1 **Shriners celebrity connection telling him to take that
2 out because there wasn't any authorization for that, and
3 a number of other things on the three cent business being
4 incorrect. I don't know if Paul relayed that on to
5 Vantage.**

6 **BY MR. JOHNSON:**

7 Q Perhaps you can answer the question that I
8 asked you, Mr. Fleisher, and that question was whether
9 you have any knowledge of your own personal direct
10 knowledge that at the time this statement was included in
11 the promotional literature by Vantage that Vantage knew
12 that that information was not accurate?

13 MR. GRIFFIN: Objection.

14 **A That's a correct statement that you just made.**

15 **BY MR. JOHNSON:**

16 Q That you don't have any such personal
17 knowledge? That's right?

18 MR. GRIFFIN: Objection.

19 **A That's correct. That's correct.**

20 **BY MR. JOHNSON:**

21 Q Let's move to Exhibit 30, if we can, sir. This
22 business with the incorrect telephone number, I take it
23 that you hadn't reviewed the promotional information that
24 contained the incorrect telephone number before it went
25 out; otherwise, I take it, you would have caught that,

Page 172

1 right, sir?

2 **A Yes, I would have.**

3 **Q Do you have knowledge, personal knowledge --**

4 **not just what somebody may have told you, but do you have**

5 **personal knowledge as to what other persons, if any,**

6 **reviewed that material before it went out?**

7 **A Yes.**

8 **Q Okay. And what personal knowledge do you say**

9 **you have as to what other persons reviewed that material**

10 **before it went out?**

11 **A Both Paul Gramblin and Bill Fawcett, because I**

12 **recall meeting with them concerning that.**

13 **Q So what you're saying is that they told you**

14 **about -- something about what other people had reviewed**

15 **before this material -- before it went out?**

16 **A No, I'm not saying that.**

17 **Q What is it you're saying?**

18 **A You asked me if I had personal knowledge if**

19 **whether or not anyone else other than me had reviewed**

20 **this material before it went out. I met with Mr. Fawcett**

21 **and Mr. Gramblin regarding this particular material and**

22 **we all agreed that the -- that material made incorrect**

23 **statements, and I don't recall personally making a**

24 **statement to Vantage pointing out that those were**

25 **incorrect.**

Page 173

1 **Q We're talking about the erroneous telephone**

2 **number. Do you have that in mind?**

3 **A Yes. Well, the erroneous telephone number was**

4 **the subject of an e-mail from Susan Corliss at Vantage.**

5 **Q I don't want to cut you off, but my question**

6 **was just do you have in mind that what we're talking**

7 **about is the material contained an erroneous telephone**

8 **number? I take it you have that in mind, sir?**

9 **A Yes. Now, would you please repeat the**

10 **question?**

11 **Q Okay. Now, with respect to that material that**

12 **included the erroneous telephone number, is that one or**

13 **more other persons at Shriners that told you that they**

14 **hadn't reviewed that material before it went out?**

15 **A I don't know what that question means. Does it**

16 **mean -- I really don't know what the question means. I**

17 **apologize.**

18 **Q That's okay. I'll try to find a more effective**

19 **way to communicate with you, Mr. Fleisher.**

20 **A Thank you.**

21 **Q We started this when I asked you whether you**

22 **had reviewed the material with the erroneous telephone**

23 **number and you told me that you hadn't, right?**

24 **A I had at one time. Yes, I did.**

25 **Q Yeah, but I thought you said you hadn't**

Page 174

1 reviewed that material with the erroneous telephone

2 number before it went out. Am I wrong about that? Had

3 you reviewed it before it went out?

4 **A Oh, that particular one? You are correct on**

5 **that. I had not reviewed that one. I was thinking of**

6 **the one that had the celebrities mentioned in it.**

7 **Q That's why I mentioned a moment ago -- I put**

8 **the context to you again so that hopefully we would be on**

9 **the same page.**

10 **A All right.**

11 **Q Talking about the materials with the erroneous**

12 **telephone number and as a result of that some woman**

13 **somewhere in Florida got 20 or so calls. Do you recall**

14 **Mr. Griffin asking you about that earlier this afternoon?**

15 **A Yes, I do.**

16 **Q Okay. And you've just told me with respect to**

17 **that incident that you hadn't reviewed that material with**

18 **the erroneous number before it went out, right?**

19 **A That's correct.**

20 **Q Okay. Now, I gather that you have received**

21 **some information from at least some other people at**

22 **Shriners the substance of which was that they told you**

23 **that they hadn't reviewed that material before it went**

24 **out either; is that correct?**

25 **MR. GRIFFIN: Objection.**

Page 175

1 **A That's correct.**

2 **BY MR. JOHNSON:**

3 **Q And what they told you about that, that was**

4 **your basis for the testimony you gave to Mr. Griffin**

5 **earlier today that that material had not been reviewed by**

6 **Shriners before it was sent out by Vantage?**

7 **MR. GRIFFIN: Objection.**

8 **A That's correct.**

9 **BY MR. JOHNSON:**

10 **Q I didn't hear your answer.**

11 **A I know. I was waiting for the objection.**

12 **MR. GRIFFIN: I objected.**

13 **MR. JOHNSON: Fine.**

14 **A That's correct. That's a correct statement.**

15 **BY MR. JOHNSON:**

16 **Q Okay. You didn't have -- other than what they**

17 **told you about that you didn't have any other basis for**

18 **forming a belief about whether they had or hadn't**

19 **reviewed that material before it went out, did you?**

20 **A Other than what they told me, that's correct.**

21 **Q And the people who told you that they hadn't**

22 **reviewed that material before it went out, those were**

23 **just some of the people who worked at Shriners, weren't**

24 **they?**

25 **MR. GRIFFIN: Objection.**